

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
)	
8.929 ACRES OF LAND, MORE OR LESS,)	
SITUATE IN ARLINGTON COUNTY,)	Civil No. 1:20-cv-667
VIRGINIA;)	
)	
and)	
)	
ARLINGTON COUNTY, VIRGINIA;)	
FIBERLIGHT, LLC; VERIZON BUSINESS)	
NETWORK SERVICES, INC.; WASHINGTON)	
GAS; VERIZON VIRGINIA, LLC; JONES)	
UTILITIES CONSTRUCTION, INC.;)	
DOMINION VIRGINIA POWER; AND)	
UNKNOWN OWNERS,)	
)	
Defendants.)	

COMPLAINT IN CONDEMNATION

1. This is a civil action brought by the United States of America, at the request of the United States Department of the Army ("Army"), for the taking of land in Arlington County, Virginia, under its power of eminent domain and through a Declaration of Taking, and for the determination and award of just compensation to the owners and parties in interest.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1358. The Court has venue under 28 U.S.C. § 1403.

3. The authority for the acquisition is set forth in Schedule A, which is attached hereto and made a part hereof.

4. The public purpose for which said property is taken is set forth in Schedule B, which is attached hereto and made a part hereof.

5. A legal description of the land taken is set forth in Schedule C, which is attached hereto and made a part hereof. The property taken is described herein as the “Subject Property.”

6. A plat (map) showing the land taken is set forth in Schedule D, which is attached hereto and made a part hereof.

7. The estate taken in the property is described in Schedule E, which is attached hereto and made a part hereof.

8. The estimate of just compensation is stated in Schedule F, which is attached hereto and made a part hereof.

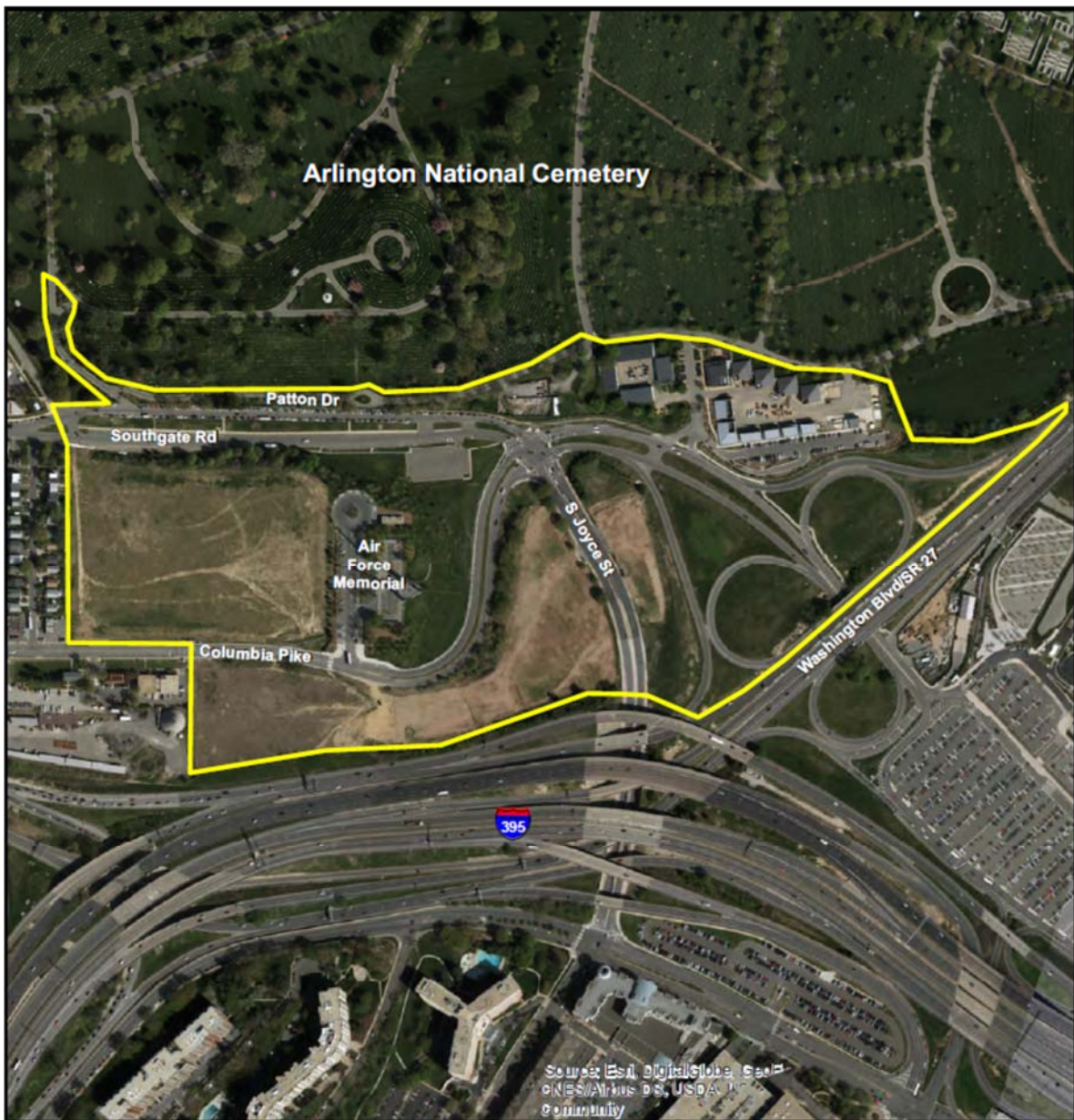
9. The names and addresses of known parties having or claiming an interest in said property are set forth in Schedule G, which is attached hereto and made a part hereof.

10. As set forth in the attached Schedules, the Subject Property consists of a portion of Southgate Road and adjacent land, a portion of Columbia Pike, and a portion of South Joyce Street.

THE PROJECT

11. The Subject Property is being taken for the purpose of expanding Arlington National Cemetery and thereby increasing the available space for interments and inurnments. Two related projects, referred to collectively herein as the “Project,” address this expansion of Arlington National Cemetery: the “Arlington National Cemetery Southern Expansion Project” (“ANCSE Project”) and the “Defense Access Roads Project” (“DAR Project”). The total Project cost is estimated at \$420 million (\$360 million for the ANCSE Project and \$60 million for the DAR Project), and Congress already has appropriated \$280 million in Project-related funding (\$220 million for the ANCSE Project and \$60 million for the DAR Project). When completed, the Project will provide for approximately 60,000 additional above- and below-ground burial sites, extending the timeline for Arlington National Cemetery to continue as an active military cemetery.

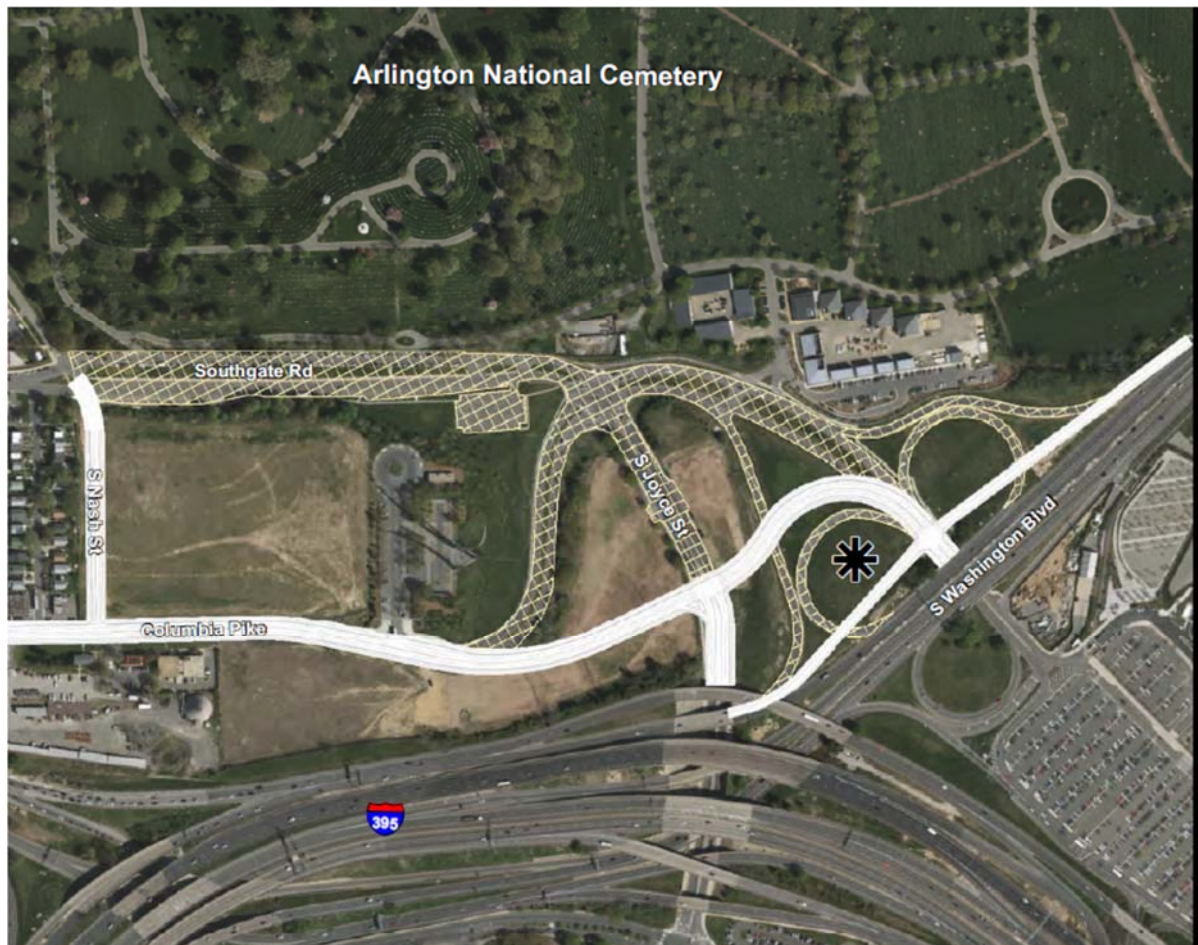
12. The Project area and the currently existing roadway network is shown in the below aerial image:



Source: Figure 1-2, Final Environment Assessment for the Southern Expansion and Associated Roadway Realignment, August 2019.¹

¹ The Final Environmental Assessment is available at <https://www.nao.usace.army.mil/Missions/Military-Construction/ANCSouthernExpansion/> (last visited June 10, 2020).

13. As part of the Project, the United States will construct substitute facilities as compensation for the taking of the Subject Property. The substitute facilities are described at Schedule F and will include, among other things, a realigned and redesigned Columbia Pike in the Project area, the construction of a new South Nash Street, parking, and necessary bridges, ramps, and appurtenances. The realigned Columbia Pike and new South Nash Street are depicted in white in the below rendering:



Source: Figure 2-1, Final Environment Assessment for the Southern Expansion and Associated Roadway Realignment, August 2019.

14. A title investigation conducted by the United States indicates that Arlington County is the fee owner of Subject Property Tracts 104-1, 104-2, and 104-3. Tract 104-1 is a portion of Southgate Road and adjacent land, and Tracts 104-2 and 104-3 are portions of the current

Columbia Pike. Arlington County separately owns a roadway easement over Tract 106, a portion of South Joyce Street.

15. The Project will benefit Arlington County and its residents by, among other things, widening Columbia Pike in the Project area to include street-scape zones with trees and streetlights on both sides of Columbia Pike, creating a new dedicated bike path on Columbia Pike, and widening pedestrian walkways on Columbia Pike. The Project also will bury overhead powerlines and incorporate the Air Force Memorial and surrounding vacant land into Arlington National Cemetery.

**ARLINGTON COUNTY HAS AGREED TO
THE PROJECT'S CONCEPTUAL DESIGN**

16. Arlington County is a cooperating agency on the Project. As such, Arlington County has participated in Project working groups and has provided substantial input on, among other things, the location and design of the roadway realignment.

17. In or around 2014, Arlington County and the Army proposed various different conceptual designs for the realigned road network. The Army, Arlington County, and the Commonwealth of Virginia ultimately agreed on a conceptual design known as ACO 3.3, a close variation of Arlington County's preferred ACO 3 conceptual design. Conceptual design ACO 3.3 provides for a new roadway on the western boundary of the former Navy Annex site to replace Southgate Road (that will be known as South Nash Street) and a realigned Columbia Pike with "tight diamond" on/off ramps to Washington Boulevard. This is shown Figure 2-1 of the Final Environmental Assessment, imaged above at paragraph 13.

18. The Project will be constructed in accordance with the conceptual design ACO 3.3.

ARLINGTON COUNTY HAS AGREED TO THE
DESIGN OF THE REALIGNED COLUMBIA PIKE

19. With respect to the realigned Columbia Pike, Arlington County requested a number of changes to the Army's proposed design.

20. On or about August 6, 2019, the Army and Arlington County reached agreement on the design of the realigned Columbia Pike that addressed Arlington County's concerns. The agreement, signed by Mark Swartz, Arlington County Manager, and Katharine Kelley, then the Superintendent of Arlington National Cemetery, is attached as Schedule H hereto and made a part hereof. The agreement provides, *inter alia*, that the realigned Columbia Pike right-of-way in the Project area (*i.e.*, Columbia Pike east of South Oak Street to Washington Boulevard) will:

- a. increase from its current width of approximately 50'-65' to a new width minimum of 88';
- b. include a 10'-wide dedicated bike path (no bike path current exists on this portion of Columbia Pike);
- c. include 8'-wide sidewalks on each side of Columbia Pike (the current sidewalks on this portion of Columbia Pike are approximately 4'-5' in width);
- d. include 5.5'-wide streetscape zones on each side of Columbia Pike, which will separate bicyclists and pedestrians from oncoming traffic and include trees, streetlights and signage (no streetscape zones currently exist on this portion of Columbia Pike); and
- e. include an 8' underground zone for utilities.

21. Arlington County has confirmed that the realigned and redesigned Columbia Pike in the Project area, as described in the attached Schedule H, is acceptable to it. For example, a

memorandum prepared by Arlington County, dated November 18, 2019, states: “The County accepts the realigned portion of Columbia Pike, constructed in accordance with the agreed cross section design, to adequately replace the portion of Columbia Pike used for the expansion project.” (Memorandum at page 2, ¶ 4) The memorandum further states: “The County agrees that construction of a properly designed new portion of Columbia Pike, conveyed to the County in fee, would replace the Columbia Pike right of way conveyed for the project and that no further compensation for this right of way is necessary.” (Memorandum at page 1, ¶ 3) Arlington County’s November 18, 2019 memorandum is attached hereto as Schedule I.

**ARLINGTON COUNTY HAS ACCEPTED A STUDY DEMONSTRATING THAT
TRAFFIC WILL NOT BE ADVERSELY IMPACTED BY THE PROJECT**

22. In addition, Arlington County has accepted the results of a study demonstrating that the Project will not have adverse impacts on traffic in the area.

23. Arlington County initially commissioned a traffic study, in coordination with the Virginia Department of Transportation (“VDOT”) and the Army, to determine the potential impacts to traffic on Columbia Pike and nearby Washington Boulevard resulting from the Project and, in particular, the ACO 3.3 conceptual design. The final Interchange Modification Report (“traffic study”), dated August 2017, concludes that the ACO 3.3 “modifications can be implemented with no impacts to mainline operations along Washington Boulevard and with generally positive impacts to the forecasted arterial operations.”

24. Arlington County and VDOT later requested an update to the August 2017 traffic study. Arlington County cited a number of reasons for an updated traffic study, including to assess future potential adverse impacts resulting from Amazon’s decision to locate its “second headquarters” (“Amazon HQ2”) in the nearby neighborhood of Crystal City.

25. In response to these concerns raised by Arlington County and VDOT, the Federal Highway Administration (“FHWA”) had an updated traffic study prepared. Arlington County and VDOT agreed on the methods and assumptions for this updated study. The updated traffic study was completed in March 2020 and concludes:

[I]t has been demonstrated that the proposed interchange modifications can be implemented with minimal to no impacts to mainline operations along Washington Boulevard and with generally positive impacts to the forecasted arterial operations, even when considering the changes in study area traffic, access, and development that are the subject of this IMR Update. The interchange modifications and Columbia Pike realignment to be accomplished by the [Project] are appropriate to accommodate the potential future traffic and multimodal needs related to the Amazon HQ2 Campus, Amazon-related development in Crystal City, traffic generated by the relocated [Arlington National Cemetery] operations complex, and traffic generated by the [planned 9-11 Visitor Education Center].

See Columbia Pike/Washington Boulevard Interchange Modification Report UPDATE (March 2020) at ES-7.

26. Arlington County has concurred with the results of this updated traffic study. In a letter dated March 18, 2020, Arlington County stated that, “with regard to the realignment of Columbia Pike, Route 244 and the interchange improvements at Washington Boulevard Arlington County supports the design as presented to the public during the public Meeting held on February 11, 2020.”

**ARLINGTON COUNTY HAS ACKNOWLEDGED THAT A PORTION OF
SOUTHGATE ROAD (TRACT 104-1) SHOULD BE CLOSED**

27. On information and belief, the current eastbound and westbound lanes of Southgate Road have been utilized as public right-of-way for decades, since at least the late 1940s.

28. Arlington County has acknowledged that a portion of Southgate Road (Subject Property Tract 104-1) is needed for the Project and that therefore this roadway should be closed and become part of Arlington National Cemetery. Arlington County’s memorandum of November

18, 2019 states, in pertinent part: “The County supports the expansion project and accepts that the Southgate Road right of way is needed for the Project....” *See* Schedule I at page 1, ¶ 1.

29. Arlington County proposed constructing a new roadway on the western boundary of the former Navy Annex site to replace Southgate Road as part of its preferred conceptual design (ACO 3). The Army agreed to Arlington County’s proposal. As noted above, conceptual design ACO 3.3 provides for construction of a new South Nash Street on the western boundary of the former Navy Annex site.

30. The planned South Nash Street is the result of collaborations with and input from Arlington County.

**THE SUBSTITUTE FACILITIES WILL PROVIDE THE SAME (OR IMPROVED)
FUNCTIONAL UTILITY AS THE CURRENTLY EXISTING ROAD NETWORK**

31. The overall Project, including the realigned and redesigned Columbia Pike and the planned South Nash Street, will provide the same (or improved) functional utility as the currently existing road network, including for: vehicular traffic, parking, public transportation, utilities, pedestrians, bicyclists, and other non-vehicular modes of transportation (*e.g.*, scooters).

32. Arlington County has expressed its approval of the Project. For example, an Arlington County news release dated June 15, 2017, quotes County Manager Mark Schwartz as follows:

The realignment of Columbia Pike and the multimodal improvements that will be made in this corridor not only will improve the transportation network, but also will allow us to upgrade the streetscape that will serve as a fitting boundary for Arlington National Cemetery, the Air Force Memorial, the Pentagon Memorial Visitor’s Center, and other uses in this segment of the Columbia Pike corridor.

Moreover, Arlington County’s November 18, 2019 memorandum states that Arlington County “supports the expansion project.” (Schedule I at page 1, ¶ 1)

33. Moreover, Arlington County has agreed that substitute facilities are an appropriate form of compensation for the taking of at least some, if not all, of the Subject Property. For example, Arlington County's November 18, 2019 memorandum states: "The County agrees that construction of a properly designed new portion of Columbia Pike, conveyed to the County in fee, would replace the Columbia Pike right of way conveyed for the project and that no further compensation for this right of way is necessary." (Schedule I at page 1, ¶ 3)

34. In addition, on or about April 25, 2020, the Arlington County Board adopted with consent a resolution endorsing the major design elements of the DAR Project. The resolution was titled: "ENDORSEMENT OF MAJOR DESIGN ELEMENTS FOR THE DEFENSE ACCESS ROADS (DAR) PROJECT TO REALIGN COLUMBIA PIKE, MODIFY THE S. JOYCE STREET INTERSECTION AND THE COLUMBIA PIKE/WASHINGTON BOULEVARD (ROUTE 27) INTERCHANGE, ELIMINATE SOUTHGATE ROAD, AND CONSTRUCT A NEW SEGMENT OF S. NASH STREET." The resolution recites, among other things, that "the project will improve multimodal capacity and safety by adding pedestrian and bicycle facilities as well as street lighting, and street trees," and that "the project will improve multimodal access to regional destinations, and maintain consistency with the Arlington County Master Transportation Plan, the Columbia Pike Multimodal Street Improvements Project, ANC expansion plans and Pentagon 9/11 Memorial plans." A copy of the resolution and Board Report is attached hereto at Schedule J.

35. For all of the above reasons, just compensation for the taking of the Subject Property is the substitute facilities to be constructed by the United States.

WHEREFORE, the United States requests judgment as follows:

- A. that the Subject Property and interests be condemned pursuant to the Declaration of Taking filed with this complaint, pursuant to 40 U.S.C. § 3114;
- B. that just compensation is provided in the form of substitute facilities; and
- C. that this Court award such other relief as may be lawful and proper.

Dated: June 15, 2020

Respectfully submitted,

JEFFREY B. CLARK
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT AND NATURAL RESOURCES
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